

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

- v - :

AFFIRMATION

08 Cr. 251 (RMB)

IRVING ROMAN, :

Defendant. :

-----X

PEGGY M. CROSS, Esq., hereby affirms under penalties of perjury pursuant to 28 U.S.C. §1746:

1. I am a staff attorney with the Federal Defenders and trial counsel to the defendant Irving Roman. I make this affirmation in support of Mr. Roman's motion to suppress physical evidence seized from him on or about February 26, 2008 and any post-arrests statements elicited from him. All statements herein are based on information and belief, unless otherwise indicated.

2. Mr. Roman is charged by indictment with one count of possession of a firearm.

3. On February 26, 2008, according to the criminal complaint filed in this case, a police officer "observed a black firearm located in [Mr. Roman's] waistband and what appeared to be an authentic auxiliary police shield hanging from a chain around [Mr.] Roman's neck." See Exhibit A, Criminal Complaint at ¶4. According to the complaint, the officer then witnessed

another officer "open the passenger door to the Red Minivan and remove [Mr. Roman] from the vehicle" and "remove the black firearm from [Mr.] Roman's waistband." Id. at ¶5. The observing officer then "placed [Mr.] Roman on the ground and removed the police shield from his neck." Id. According to the complaint, Mr. Roman "was given his Miranda warnings" and "provided a written statement" in which he "admitted to possession the firearm." Id. at ¶6.

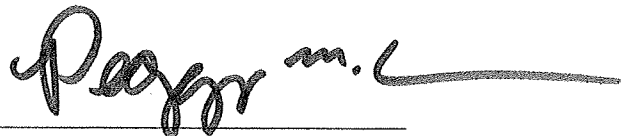
4. Mr. Roman denies engaging in any suspicious behavior prior to the time the officers approached the vehicle. He denies that there was a firearm visible in his waistband and he denies wearing anything on a chain around his neck that resembled a police shield. See Exh. B ¶3. He also denies that he voluntarily waived his Miranda rights or that he voluntarily made statements to the police. Id. at ¶4.

6. The physical evidence in this case should be suppressed because it was obtained as a result of the illegal seizure of Mr. Roman. The police had no authority as an initial matter to detain or seize Mr. Doughty, see Terry v. Ohio, 392 U.S. 1, 30 (1968); United States v. Bayless, 201 F.3d 116, 132 (2d Cir.2000), and they did not have the authority to remove him from the vehicle and frisk him. Ybara v. Illinois, 444 U.S. 85, 93 (1979); United States v. Jaramillo, 25 F.3d 1146, 1151 (2d Cir. 1994). Thus, the seizure of Mr. Roman and the discovery of the firearm were unlawful.

7. After Mr. Roman's arrest, he made certain statements to the police. Additionally, while in police custody, he was questioned at the 47st Precinct house in the Bronx. These statements and this questioning are the unlawful fruit of the illegal seizure of Mr. Roman and any statements obtained by the police must therefore be suppressed as well. Brown v. Illinois, 422 U.S. 590 (1975).

WHEREFORE, it is respectfully requested that the Court issue an ORDER suppressing the physical evidence and statements obtained from Mr. Roman in violation of his constitutional rights; or in the alternative that the Court set a hearing on this motion pursuant to Federal Rules of Criminal Procedure 12 and 41.

Dated: New York, New York
June 23, 2008

A handwritten signature in dark ink, appearing to read "Peggy M. Cross", with a long horizontal flourish extending to the right.

PEGGY M. CROSS, ESQ.

Exhibit A

Approved: _____

NATALIE LAMARQUE
Assistant United States Attorney

08 MAG 0383

Before: HONORABLE THEODORE H. KATZ
United States Magistrate Judge
Southern District of New York

----- x

UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
-v.-	:	Violation of
	:	18 U.S.C. § 922(g)(1)
IRVING ROMAN,	:	
Defendant.	:	COUNTY OF OFFENSE:
	:	BRONX

----- x

SOUTHERN DISTRICT OF NEW YORK, ss.:

JOSE VARGAS, being duly sworn, deposes and says that he is a New York City Police Department Detective with the Bronx Narcotics Organized Crime Control Bureau, and he charges as follows:

COUNT ONE

On or about February 26, 2008, in the Southern District of New York, IRVING ROMAN, the defendant, after having been convicted upon a plea of guilty in a court of a crime punishable by imprisonment for a term exceeding one year, to wit, Criminal Possession of a Controlled Substance in the Third Degree, in violation of New York Penal Law 220.16, a Class B Felony, in New York Supreme Court, New York County, on or about September 26, 2003, unlawfully, willfully, and knowingly, did possess in and affecting commerce, a firearm, to wit, a loaded 9 millimeter Hi-Point semi-automatic pistol, which previously had been shipped and transported in interstate and foreign commerce.

(Title 18, United States Code, Section 922(g)(1).)

The bases for my knowledge and for the foregoing charge, is, in part, as follows:

1. I am a Detective in the Bronx Narcotics Organized Crime Control Bureau of the New York City Police Department ("NYPD"), and I have been personally involved in the investigation of this matter. This Affidavit is based upon my

personal participation in the investigation, my examination of reports and records, and my conversations with other law enforcement agents and other individuals. Because this Affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

2. On or about February 26, 2008, I and other officers were conducting routine surveillance of an apartment building located at 689 East 233rd Street, in the Bronx ("the Apartment Building").

3. I observed a Red Ford Venture Minivan ("Red Minivan") double parked in front of the Apartment Building. The Red Minivan was obstructing traffic, in violation of New York Vehicle Traffic Law.

4. I and other officers exited the police vehicle and approached the Red Minivan. I observed a black firearm located in IRVING ROMAN, the defendant's, waistband and what appeared to be an authentic auxiliary police shield ("police shield") hanging from a chain around the ROMAN's neck.

5. I observed another officer ("Officer-1") open the passenger door to the Red Minivan and remove IRVING ROMAN, the defendant, from the vehicle. I then observed Officer-1 remove the black firearm from ROMAN's waistband. I then placed ROMAN on the ground and removed the police shield from his neck.

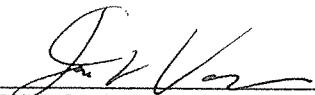
6. I learned from a Detective that IRVING ROMAN, the defendant, was given his Miranda warnings. After signing a written waiver of his Miranda rights, ROMAN a provided written statement, which I have reviewed. In his written statement ROMAN admitted to possessing the firearm.

7. I have reviewed Firearms Trace Summaries from the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("Summaries") regarding the Weapons' origin and shipment. According to the Summaries, the 9 millimeter Hi-Point semi-automatic pistol was not manufactured in the State of New York.

8. I have reviewed criminal history records pertaining to IRVING ROMAN, the defendant, which reflect that the defendant was convicted on or about September 26, 2003, of

Criminal Possession of a Controlled Substance in the Third Degree, in violation of New York Penal Law 220.16, a Class B Felony, in New York Supreme Court, New York County, and was sentenced to one to three years' incarceration.

WHEREFORE, the deponent respectfully requests that IRVING ROMAN, the defendant, be imprisoned, or bailed, as the case may be.



JOSE VARGAS
Police Officer
New York City Police Department

Sworn to before me this
27th day of February 2008

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

THEODORE H. KATZ
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA : **08 CR. 251 (RMB)**

- v - :

IRVING ROMAN, :

Defendant. :

-----X

DECLARATION OF IRVING ROMAN

I, IRVING ROMAN, hereby declare under the penalties of perjury, pursuant to 28 U.S.C. § 1746, that:


1. I am the defendant in the above captioned criminal case, and I make this declaration in support of a motion pursuant to Rules 12(b)(3) and 41 of the Federal Rules of Criminal Procedure to suppress physical evidence and statements obtained from me by law enforcement authorities in violation of my constitutional rights. Since the only purpose of this declaration is to show that my constitutional rights were violated, I have not included every detail of what occurred.
2. On February 26, 2008, I was the passenger in an automobile that was parked in the Bronx when New York Police Department officers approached the automobile.
3. Prior to the time they approached the automobile, I was not engaged in any suspicious behavior. When they approached the automobile, there was no gun visible in my waistband and I was not wearing anything on a chain around my neck that resembled a police or auxiliary police shield. No gun was visible when they removed me from the

vehicle.

4. As a result of my encounter with the police, they recovered a gun from me.
5. After the police placed me in custody and recovered the gun, I made certain statements to the police. I did not make these statements voluntarily nor did I voluntarily waive my Miranda rights.

I declare under penalty of perjury that the foregoing is true and accurate.

Dated: Brooklyn, New York
June 23, 2007


Irving Roman